

**BOARD OF APPEALS CASE NO. 115**

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**BEFORE THE**

**APPLICANT: Bel Air Properties II, LLC**

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**ZONING HEARING EXAMINER**

**REQUEST: Rezone 17,674 square feet from  
Agricultural to Commercial Industrial  
U.S. Route 1 at MD Route 23, Bel Air**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 2/20/02 & 2/27/02**

**HEARING DATE: April 22, 2002**

**Record: 2/22/02 & 3/1/02**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Bel Air Properties II, LLC, is requesting a rezoning of the subject lot on the basis that a “mistake” in the legal sense was made during the 1997 Comprehensive Rezoning.

The subject parcel is located at the northeast corner of the intersection of Conowingo Road and MD Route 23 and is more particularly identified on Tax Map 41, Grid 1A, Parcel 675. The parcel is currently zoned AG/Agricultural and CI/Commercial Industrial is proposed. The parcel proposed for rezoning consists of 17,674 square feet from a total of 9.47 acres. The parcel is entirely within the Third Election District.

### **Findings of Fact:**

Mr. Tory Pierce appeared and qualified as an expert civil engineer. Additionally, Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning that supports the rezoning on the basis of mistake. The facts of the case are undisputed and may be summarized as follows:

Approximately 35 years ago, the State of Maryland acquired certain rights-of-way for the proposed construction of the Bypass, the extension of MD Route 23, and the relocation of MD Route 543. These projects were then abandoned until 1996, when the State Highway Administration (SHA) began acquiring additional rights-of-way for the Bypass construction and Route 23 extension. The relocation of Route 543 was eliminated from the original proposal. SHA acquired the final right-of-way that was needed for the Hickory Bypass on or about June 8, 1999, almost two years after the adoption of the official zoning maps.

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SHA began construction of the Bypass on or about July 22, 1999, and the Bypass officially opened in July 2000.

Because SHA was in the process of acquiring rights-of-way during the 1997 rezoning, the County Council and the Department of Planning and Zoning had no way to know, at the time, whether AG zoning would be appropriate for the subject property. While the project was proposed and planned in 1997, neither the County Council nor the Department proposed any change to the zoning classification of the subject property due to the uncertainties with respect to the project.

The uncertainties included the final alignment of the Bypass and the Route 23 extension and the ultimate disposition and use of the rights-of-way, which were not needed for the project. Neither the County Council nor the Department knew or could have known at the time the property was originally zoned AG or during the Comprehensive rezoning in 1997, how the subject property would be owned, configured or used. If the County Council or the Department had known the final alignment of the roads, the zoning classification probably would have been changed to correct the mistake classification as AG.

Additional evidence or mistake may be found in the fact that the County acquired the title to the subject property in March 2001. Initially, SHA intended to purchase right-of-way from the County. However, SHA was left with approximately 9.5 acres of land, which was not needed for the project. Because SHA agreed to relocate Tucker Field and because the subject property was suitable for the relocation, the County agreed to a swap of the subject property for the County's right-of-way. If the County had known the ultimate use and disposition of the subject property in 1997, the County probably would have corrected the zoning to make the zoning classification consistent with the intended use of the subject property.

The County owns property directly adjacent to the subject parcel and proposed is a swap of acreage. The County is transferring an area approximately 17,674 square feet in size to the current Applicant (the property subject to the present request). In return, the County will receive an identical amount of property from the Applicant that will be annexed to Tucker Field and used for additional parking at the Tucker Field ball fields and recreation area.

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The area being transferred actually wraps around the Applicant's CI property and serves no agricultural purposes. There is an existing church structure that will be removed as part of the future development. Public water and sewer are available to all parcels and commercial uses line the Conowingo Road corridor. Directly across Conowingo Road is 12 acres owned by WAWA Stores and it is zoned B3. The additional CI parcel will square off the existing CI property owned by the Applicant and allow access to the parcel from Route 23. The witnesses were unanimous in opining that no adverse impacts would result from this rezoning and that this was the appropriate zoning for the property.

Mr. Edward Crouse appeared in opposition to the request. Mr. Crouse stated that drainage problems have been increasing since development began in earnest in this area. While articulate in his statements regarding drainage associated with development and creation of impervious surface area, the witness was unable to state why this rezoning in particular would create any adverse impacts particularly considering the land swap intended and the creation of a storm water management facility.

### **CONCLUSION:**

The Applicant, Bel Air Properties II, LLC, is requesting a rezoning of the subject lot on the basis that a "mistake" in the legal sense was made during the 1997 Comprehensive Rezoning.

In Maryland, there is a strong presumption of the correctness of comprehensive rezoning. To justify any piecemeal rezoning a strong showing of mistake in original or comprehensive zoning must be made. Hoy v. Boyd, 401 A.2d 1047, 42 Md. App. 527 (1979). The mistake need not be an actual factual mistake to avoid the effect of comprehensive zoning. When subsequent events demonstrate that any significant assumption made by the county council at the time of comprehensive rezoning was invalid, the presumption of validity accorded the comprehensive rezoning is overcome and the parcel may be rezoned on a piecemeal basis. Boyce v. Sembly, 334 A.2d 137, 25 Md. App. 43 (1975).

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In the instant case, both the Applicant and the Department of Planning and Zoning have provided substantial and un rebutted testimony supporting the contention that the County Council did not have before it complete and accurate information regarding this parcel and adjacent parcels that would have allowed an informed consideration of the appropriate zoning classification of this parcel. There is no doubt that this sliver of AG surrounding a large CI zoned property is inappropriate for agricultural use. In the opinion of the Hearing Examiner, mistake, in the legal sense, occurred.

For the reasons stated herein, the Hearing Examiner recommends approval of the request to rezone the subject parcel.

Date: MAY 15, 2002

William F. Casey  
Zoning Hearing Examiner